

# **EXHIBIT D**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

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IN RE: Bard IVC Filters Products	)	
Liability Litigation,	)	MD 15-02641-PHX-DGC
	)	
	)	
	)	
Lisa Hyde and Mark Hyde, a married	)	Phoenix, Arizona
couple,	)	September 20, 2018
	)	
Plaintiffs,	)	
	)	
v.	)	CV 16-00893-PHX-DGC
	)	
C.R. Bard, Inc., a New Jersey	)	
corporation, and Bard Peripheral	)	
Vascular, an Arizona corporation,	)	
	)	
Defendants.	)	
	)	

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BEFORE: THE HONORABLE DAVID G. CAMPBELL, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TRIAL DAY 3 - A.M. SESSION

Official Court Reporter:  
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Proceedings Reported by Stenographic Court Reporter  
Transcript Prepared with Computer-Aided Transcription

1 P R O C E E D I N G S

2 (Proceedings resumed in open court outside the presence  
3 of the jury.)

4

5 THE COURT: Thank you. Please be seated.

6 Morning, everybody.

7 EVERYBODY: Morning, Your Honor.

8 THE COURT: Yesterday we had a discussion at sidebar  
9 about Dr. McMeeking's safety-related opinions and it concluded  
10 with my asking plaintiffs to identify the portions of the  
11 report that show that. My question this morning is whether  
12 that's still an issue and, if so, what we need to cover.

13 MR. O'CONNOR: And I apologize, Your Honor. I know  
14 that we talked about safety, but where that limitation is, I  
15 don't think I understand it.

16 Obviously he has testified and has written in his  
17 report that there are safety standards in engineering that  
18 should be followed.

19 Obviously he talks about devices that can be unsafe  
20 for the user. In terms of safety he was disclosed to talk  
21 about that the -- and his report says the SNF, in his opinion,  
22 is a safer design because, in his opinion, it does not have  
23 the design deficiencies that the filters like the Recovery,  
24 G2, G2X, and Eclipse had.

25 And I believe that was raised with you in prior

1 motions. And I thought you agreed that McMeeking can testify  
2 along those lines.

3 In terms of what he would say for a particular  
4 patient, he is not going to come in and say that the  
5 Simon Nitinol filter was appropriate for Lisa Hyde, and I  
6 wouldn't ask him that.

7 He has said in his case-specific report that the Bard  
8 G2X filter is improperly and inadequately designed such that  
9 it does not prevent tilt, caudal migration, fracture and  
10 perforation, as it lacks adequate safeguards against these  
11 failure modes to a reasonable degree of scientific and  
12 engineering probability and certainty. The failures of  
13 Ms. Hyde's filter resulted from poor design, inadequate  
14 testing prior to marketing the filter, and implantation of the  
15 filter -- and implantation -- prior to implantation of the  
16 filter in Mrs. Hyde, and improper internal assessment of the  
17 filter via analysis, including finite analysis and other  
18 methods of analysis utilized by Bard.

19 So I believe that sums his opinions in this case and  
20 where he's going to go.

21 THE COURT: All right. Ms. Helm, do you have a  
22 problem with what Mr. O'Connor just read as an opinion to be  
23 stated?

24 MS. HELM: Your Honor, those opinions, to use a term  
25 I've heard you say before, are all fair game. My objection

1 was not based on those. My objection was based on a question  
2 when Dr. McMeeking was asked what his opinions were in the  
3 case and he said that he was going to testify that the IVC  
4 filter was unsafe. Not that it didn't meet safety standards,  
5 not that it was improperly designed, that it was unsafe or not  
6 safe. And we did an extensive word search of all of his  
7 reports and all of his depositions, and the Booker and Jones  
8 testimony, and the opinion the filter is not safe, the filter  
9 is unsafe, the filter is not reasonably safe does not appear  
10 anywhere in those reports, the deposition testimony, or his  
11 prior testimony.

12 So this is a new opinion. It's a step further than  
13 what Mr. O'Connor says he's going to offer. If he's staying  
14 limited to what Mr. O'Connor says and not going to offer the  
15 opinion that came out of his mouth yesterday when I raised the  
16 sidebar, we're okay. But if he's going to go a step further  
17 and say the filter is unsafe, not reasonably safe, or  
18 something along those lines, that is a nondisclosed opinion in  
19 the case.

20 THE COURT: Mr. O'Connor?

21 MR. O'CONNOR: Well, Your Honor, like I said at  
22 sidebar, I'll try to stay away from that and I'm sure he will.  
23 But I just think those types of words are built in the English  
24 language, and they're built in engineering. And in  
25 engineering, the basic premise of it is to protect the safety